



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/150415

PRELIMINARY RECITALS

Pursuant to a petition filed July 02, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by iCare to discontinue Petitioner's Family Care eligibility, a hearing was commenced on August 14, 2013 and concluded on October 01, 2013, at Milwaukee, Wisconsin.

The issue is whether the agency correctly discontinued Petitioner's Family Care Program (FCP) eligibility because he no longer meets functional eligibility requirements.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Atty. Elizabeth Bartlett
iCare
1555 N. Rivercenter Drive
Suite 206
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was originally found to be eligible for the FCP in April 2010.

3. Petitioner is 52 years of age (DOB 12/22/1960). He lives alone in the community. His diagnoses include metabolic disorder, hypertension, arthritis, chronic pain or fatigue, depression, bi-polar disorder and allergies. He has right shoulder problems but no specific diagnosis.
4. On April 29, 2013 the above agency conducted a review of Petitioner's functional abilities via an in home assessment. That was followed up by a June 12, 2013 meeting with Petitioner at the agency offices and another in-home assessment on June 17, 2013. A hearing was commenced on August 14, 2013 but adjourned as Petitioner had an MRI scheduled for a little later in August. That MRI was completed and, on August 30, 2013, another home assessment was completed. The hearing concluded on October 1, 2013.
5. The agency results from all three in home assessments was the same – the agency found that Petitioner was slow in dressing but otherwise independent as to activities of daily living (ADLs) and that he needed some assistance with grocery shopping, laundry and medications but was otherwise independent as to IADLs. The reason for the discontinuance of Petitioner's family care is that reevaluations of Petitioner indicated that Petitioner no longer met functional needs requirements for nursing home level of care.

DISCUSSION

The Family Care Long Term Care program (FCP) is a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. *Medicaid Eligibility Handbook (MEH)*, §29.1. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code at Chapter DHS 10. Also see *Medicaid Eligibility Handbook (MEH)*, §29.1.

Once a person has been enrolled in FCP they may become ineligible for a variety of reasons, including a change in functional eligibility. *Id.*, §29.5.2.

As of January 1, 2008 the levels of care are:

1. Nursing Home (formerly Comprehensive NH)
2. Non-Nursing Home (formerly Intermediate and Comprehensive non-NH)

See the MEH, §29.4.

Wis. Admin. Code, §DHS 10.33(2) provides that an FCP applicant must have a functional capacity level of comprehensive or intermediate; I note here, however, that Wis. Stat., §46.286, uses the terms “nursing home” and “non-nursing home” levels just as the agency in this case. If the person meets the comprehensive (nursing home) level, s/he is eligible for full services through a care management organization (CMO), including Medical Assistance (MA). *Wis. Admin. Code*, §DHS 10.36(1)(a). If the person meets the intermediate (non-nursing home) level, s/he is eligible for full services only if s/he is in need of adult protective services, s/he is financially eligible for MA, or she is grandfathered as described in §DHS 10.33(3). *Wis. Admin. Code*, §DHS 10.36(1)(b). A person eligible under the non-nursing home level is eligible for less FCP services.

Comprehensive functional capacity is defined at *Wis. Admin. Code*, §DHS 10.33(2)(c):

(c) Comprehensive functional capacity level. A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.
6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:
 - a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.
 - b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self neglect or resistance to needed care.

Intermediate functional capacity is defined at *Wis. Admin. Code, §DHS 10.33(2)(d)*:

d) Intermediate functional capacity level. A person is functionally eligible at the intermediate level if the person is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others, as is evidenced by a finding from application of the functional screening that the person needs assistance to safely or appropriately perform either of the following:

1. One or more ADL.
2. One or more of the following critical IADLs:
 - a. Management of medications and treatments.
 - b. Meal preparation and nutrition.
 - c. Money management.

A person's long term care needs and the level of care are determined by use of the Long Term Care Functional Screen. The Long Term Care Functional Screen (LTC FS) is a functional needs assessment describing assistance needed with:

- **Activities of Daily Living** (ADL's-bathing, dressing, mobility, transfers, eating, toileting)
- **Instrumental Activities of Daily Living** (IADL's-meal preparation, medication management, money management, laundry, telephone, transportation, and employment)
- **Health Related Tasks** (including skilled nursing)
- **Diagnoses**
- **Behavioral Symptoms and Cognition**

The LTC FS also includes information on risk factors, mental health and substance abuse, and where the person would like to live. *Source: Wisconsin Department of Health Services, online, Adult Long-Term Care Functional Screen, Module #1: Overview of the Long Term Care Functional Screen (LTC FS), §1.1 History.* (<http://dhs.wisconsin.gov/lc/FUNCTIONALSCREEN/instructions.htm>)

The ADLs are bathing, dressing, eating, mobility in the home, toileting and transferring. The IADLs are meal preparation, medication administration and management, money management, laundry and/or chores, use of the telephone, transportation, overnight care or supervision and employment. *Id.*, *Module #4*. Petitioner is not cognitively impaired so must be unable to safely perform 3 or more activities of daily living; 2 or more ADLs and 1 or more IADLs or 5 or more IADLs to meet the nursing home level of care to be found functionally eligible at the nursing home/comprehensive level of care.

Here Petitioner position is that he needs some assistance to safely get in and out of his tub/shower, that he cannot stand too long so has a difficult time shaving and dressing. He also states that he loses his balance when transferring and can only walk about a block before having to rest. Petitioner also maintains that his health issues necessitate help with grocery shopping, laundry and assistance with medication set up.

I am sustaining the case management determination that Petitioner no longer meets the functional need requirements of the nursing home level of care. The case manager review of Petitioner concluded that he is capable of performing all of his ADLs independently; albeit somewhat slowly. The functional screen instructions indicate that the speed with which a person performs a task is not the issue –it is safety. *Wisconsin Long Term Care Functional Screen Instructions §4.3, found at <http://www.dhs.wisconsin.gov/LTCare/FunctionalScreen/WebCT/instructions4.htm>*. I also note that Petitioner is not open to exploring other alternatives; specifically, a shower chair. A cane has been provided and he does use that out of the home but not within the residence. Although he is somewhat slow at dressing and grooming there is nothing to indicate he cannot do so safely especially if he sits down to do these tasks. It is recognized that Petitioner needs help with medications, laundry and grocery shopping.

Nonetheless, to be eligible for family care, a person must have a functional needs that cannot be met by the individual on their own and the person would require institutionalization but for the Family Care Program intervention. That is determined by the assistance required with specific, and a specific number of, ADLs and IADLs. The evidence here does not demonstrate that Petitioner meets the nursing home level of care as he because he unable to safely perform 3 or more activities of daily living; 2 or more ADLs and 1 or more IADLs or 5 or more IADLs.

CONCLUSIONS OF LAW

That the agency correctly concluded that Petitioner no longer meets the functional care requirements for the Family Care program.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

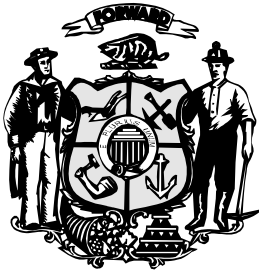
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 23rd day of October, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 23, 2013.

iCare
Office of Family Care Expansion